IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1968 OF 2007

Sheetal Margaret James ..... Petitioner.

V/s

D. K. Patel (Caretaker) &
Devang Patel & Others ..... Respondents.

Ms. Sheetal Margaret James, present in person.

Mr. S.R. Borulkar, Public Prosecutor for Respondent Nos. 13 to 18.

CORAM : D.K. DESHMUKH &
V.M. KANADE, JJ.

DATE : 17th December, 2007.

P.C.:

1. The Petitioner has filed this Petition, making a grievance about the Police Authority not taking action against the persons, some of whom have been joined as Respondents in the Petition, despite complaints being made by the Petitioner. An Affidavit has been filed by the Assistant

Police Inspector Babasaheb Thombe. What is stated in paragraph Nos. 3 to 6 is relevant. It reads as under:-

> "3. At the outset, this is to place on record that the petitioner has filed private complaint before the Hon'ble Judicial Magistrate, First Class, Thane vide CC No.316 of 2007 which is pending for hearing and final disposal before the said Court. The petitioner has made similar grievances as made in the present Petition in the said private complaint which is pending before the Hon'ble J.M.F.C. Court, Thane. I say that in the said proceedings, the Hon'ble Judicial Magistrate First Class Thane on 29.10.2007 has passed an order u/s 156 (3) of Criminal Procedure Code wherein the Vartak Nagar Police Station is asked to investigate and submit the report. I say that after receiving the said order of the Hon'ble Court, Vartak Nagar Police Station has on 31.10.2007 registered M Case No.4 of 2007 u/s 427, 428, 454, 380, 506 (ii), 34 of I.P.C and the investigation in the said case has commenced. I crave leave to refer to and rely upon the record as and when required.

4. I say that during the course of investigation of the said case i.e. M. Case No.4 of 2007, I have recorded the statements of the petitioner and her sister, spot panchanama has been done and on 28.11.2007 I have by letter intimated to the petitioner that the details about the witnesses should be furnished to us, to enable us to record their statements and proceed with the investigation. I say that on 1.12.2007 the petitioner forwarded a letter wherein she requested for time to furnish us with the detail of witnesses till 8.12.2007. However, the petitioner failed to remain present on 8.12.2007 and till date have not furnished with the details of any witnesses with reference to her case which is registered at Vartak Nagar Police Station, Thane. I say that the investigation in the said case is in progress and after completing investigation appropriate report will be filed before the Hon'ble J.M.F.C. Court, Thane. I crave leave to refer to and reply upon the record as and when required.

5. I submit that the petitioner has till date forwarded 13 applications to Vartak Nagar Police Station, Thane wherein similar grievances as made in the Petition has been stated by her. The details are as under:

1. Application dated 5.5.2007 addressed to Commissioner of Police, Thane which was received by Vartak Nagar Police Station on 9.5.2007.

2. Application dated 26.5.2007 addressed to C.P. Thane which was received by Vartak Nagar Police Station 5.6.2007.

3. Application dated 6.6.2007 addressed to P.I. Vartak Nagar Police Station, Thane which was received by Vartak Nagar Police Station 8.6.2007.

4. Application dated 15.6.2007 addressed to P.I. Vartak Nagar Police Station, Thane which was received by Vartak Nagar Police Station 17.6.2007.

5. Application dated 21.6.2007 addressed to P.I. Bangar, Vartak Nagar Police Station, Thane which was received by Vartak Nagar Police Station 22.6.2007.

6. Application dated 5.8.2007 addressed to ACP Wagle Division Thane which was received by Vartak Nagar Police Station 16.8.2007.

7. Application dated 23.8.2007 addressed to ACP Wagle Division Thane which was received by Vartak Nagar Police Station 24.8.2007.

8. Application dated 30.9.2007 addressed to ACP Wagle Division Thane which was received by Vartak Nagar Police 9.10.2007.

9. Application dated 10.9.2007 addressed to ACP Wagle Division Thane which was received by Vartak Nagar Police Station 13.9.2007.

10. Application dated 14.11.2007 addressed to P.I. Vartak Nagar Police Station, Thane which was received by

Vartak Nagar Police Station 14.11.2007.

11. Application dated 15.11.2007 addressed to Deputy Chief Minister, which was received by Vartak Nagar Police Station 29.11.2007.

12. Application dated 30.11.2007 addressed to PI Vartak Nagar Police Station, Thane, which was received by Vartak Nagar Police Station 30.11.2007.

13. Application dated 11.12.2007 addressed to P.I. Vartak Nagar Police Station, Thane, received on 11.12.2007.

6. I say that the petitioner in her above applications have stated that after 20 years she has returned back alongwith her sister to India as she was acting in Films at London. The petitioner's claim that the land has been encroached through Patel(deceased) by various people who are made by the petitioner as party respondents to this petition. In

pursuance to her applications, detail enquiries have been conducted by Vartak Nagar Police Station, Thane and NC complaint has also been registered by us vide NC NO.2603 of 2007 u/s 323, 504, 506 of I.P.C. I say that notice under section 149 of Cr.P.C. has also been issued against the respondent No.12 on 21.6.2007. I say that there are cross complaints filed by the respondents against the petitioner, the same has also been registered by us vide N.C.No.1260 of 2007 u/s 506 of I.PC. and NC NO.1345 of 2007 u./s 427 of I.P.C. Hence, in pursuance to the applications
made by the petitioner, appropriate action has been taken by us. I say that the grievances of the petitioner has been dealt with us in accordance to law. I say that after completing investigation appropriate report will be submit to the Hon'ble J.M.F.C Court, Thane. I crave leave to refer to and rely upon the record as and when required."

2. It is clear that the Petitioner has also filed a complaint before the Judicial Magistrate. The order has been made by the Judicial Magistrate pursuant to which Police is

investigating the matter. Apart from complaints being made before the Magistrate the complaints made before the police authorities are concerned, investigation by the Police is going on. In any case, if the Police Authority fails to make proper investigation, it is always open to the Petitioner to file complaint before the Magistrate as she has done in one case.

3. In our opinion, therefore, in view of the detailed affidavit filed on behalf of the Police Authority and as the remedy of approaching the Magistrate is available to the Petitioner, it is not necessary for this Court to interfere in this Petition in its extraordinary jurisdiction. Petition is, therefore, disposed of.

(D.K. DESHMUKH, J.)

(V.M. KANADE, J.)